CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39598/98
by Grzegorz HULEWICZ
against Poland

The European Court of Human Rights (Third Section), sitting on 6 March 2003 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 24 August 1997,

Having deliberated, decides as follows:

THE FACTS

The applicant, Grzegorz Hulewicz, is a Polish national, who was born in 1974 and lives in Lebork, Poland.

I. THE CIRCUMSTANCES OF THE CASE

The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The first set of criminal proceedings against the applicant (No. IIK 77/97)

On 12 November 1996 the applicant was arrested on suspicion of uttering threats and robbery that he attempted to commit on that date.

On 14 November 1996 the Lebork District Court (*Sąd Rejonowy*) detained him on remand until 12 February 1997. The District Court considered that the applicant's detention was justified by the existence of serious evidence of his guilt, the gravity of the charges against him and the risk that he would go into hiding.

On 29 November 1996, ruling on the applicant's appeal, the Slupsk Regional Court (*Sąd Wojewódzki*) upheld the detention decision.

On 30 January 1997 prosecution authorities lodged with the Lebork District Court a bill of indictment against him.

A hearing scheduled for 8 May 1997 was adjourned. Further, a hearing fixed for 17 June 1997 was adjourned until 28 August 1997. The hearing listed for 28 August 1997 was also adjourned.

In the meantime, the applicant had applied for release but his request was dismissed on 17 June 1997.

On 7 October 1997 the trial court held a hearing. A hearing scheduled for 9 October 1997 was adjourned until 13 November 1997.

On 14 November 1997 the Lebork District Court delivered a judgment. It convicted the applicant as charged and sentenced him to three years' imprisonment. The applicant appealed.

On 6 February 1998 the Slupsk Regional Court amended the first-instance judgment in favour of the applicant by reducing the sentence of imprisonment to 1 year and a half.

B. The second set of criminal proceedings against the applicant (No. IIK 52/97)

On 12 November 1996 the applicant was arrested on suspicion of uttering threats and robbery that he had attempted to commit in October

1996. On 14 November 1996 the Lebork District Court detained him on remand until 13 January 1997. The court considered that the applicant's detention was justified by the existence of serious evidence of his guilt, the gravity of the charges against him and the risk that he would go into hiding.

On 18 November 1996 the applicant requested to be released, or to have his detention replaced by a more lenient preventive measure. On 29 November 1996 the Slupsk District Court upheld the decision of 14 November 1996.

On 7 January 1997 the Lebork District Court prolonged the applicant's detention until 12 February 1997.

On 13 January 1997 prosecution authorities lodged with the Lebork District Court a bill of indictment against him.

A hearing scheduled for 25 February 1997 was adjourned.

On 25 March 1997 the case-file was transmitted to the Slupsk Regional Court as the Lebork District Court did not have jurisdiction. It was registered under no. II K 25/97.

On 21 April 1997 the applicant made an application for release. On 23 April 1997 the Slupsk Regional Court dismissed the application. It relied on the gravity of the charges against the applicant.

On 9 May 1997 the court refused to join the case under No. II K 77/97 (described above) to the present case.

The court held hearings on 5 and 6 November 1997.

On 6 November 1997 the applicant was released but remained in detention in the framework of the first set of proceedings.

On 5 December 1997 the trial court held a hearing and delivered a judgment. It sentenced the applicant to one year's imprisonment.

The judgment became final on 24 June 1998.

On 28 January 2000, upon the applicant's request, the Slupsk Regional Court gave cumulative judgment (*wyrok łączny*) and sentenced the applicant to one year and ten months' imprisonment as a cumulative penalty (*kara łączna*) for the convictions contained in the judgments of 6 February 1998 (delivered in the course of proceedings No. II K 77/97) and of 5 December 1997 (delivered in the course of proceedings No. II K 25/97). The applicant appealed. On 11 May 2000 the Gdansk Court of Appeal upheld the judgment.

II. RELEVANT DOMESTIC LAW

At the material time the rules governing detention on remand were contained in Chapter 24 of the Law of 19 April 1969 – Code of Criminal Procedure (*Kodeks postępowania karnego*) – entitled "Preventive measures" (*Środki zapobiegawcze*). The Code is no longer in force. It was repealed and replaced by the Law of 6 June 1997 (commonly referred to as the "New Code of Criminal Procedure"), which entered into force on 1 September 1998.

The Code listed as "preventive measures", *inter alia*, detention on remand, bail and police supervision.

Article 209 set out the general grounds justifying imposition of the preventive measures. This provision read:

> "Preventive measures [including detention on remand] may be imposed in order to ensure the proper conduct of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence."

Article 217 § 1 defined grounds for detention on remand. The relevant part of this provision provided:

> "1. Detention on remand may be imposed if:
>
> (1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent abode [in Poland]; or
>
> (2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means.
>
> ..."

Article 217 § 2 provided:

> "If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years' imprisonment, or if a court of first instance has sentenced him to at least three years' imprisonment, the need to continue detention in order to secure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed."

The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the idea that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

Article 213 § 1 provided:

> "A preventive measure [including detention on remand] shall be immediately lifted or varied, if the basis for it has ceased to exist or new circumstances have arisen which justify lifting a given measure or replacing it with a more or less severe one."

Article 225 stated:

> "Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of those measures, are considered adequate."

The provisions for "mandatory detention" (for instance, detention pending an appeal against a sentence of imprisonment exceeding three years) were repealed on 1 January 1996 by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes.

Finally, Article 218 stipulated:

> "If there are no special reasons to the contrary, detention on remand should be lifted, in particular, if:
>
> (1) it may seriously jeopardise the life or health of the accused; or
>
> (2) it would entail excessively burdensome effects for the accused or his family."

Article 212 stated:

> "A decision concerning preventive measures may be appealed [before a higher court]..."

Article 214 of the Code of Criminal Procedure provided that an accused could at any time lodge an application for release. It read:

> "An accused may at any time apply to have a preventive measure lifted or varied.
>
> Such an application shall be decided by the prosecutor or, after the bill of indictment has been lodged, by the court competent to deal with the case, within a period not exceeding three days."

Article 222 of the Code of Criminal Procedure provided:

> "1. In the investigative stage of proceedings, detention on remand shall be imposed by the court for a period not exceeding three months.
>
> 2. When, in view of the particular circumstances of the case, the investigation cannot be completed within the period referred to in paragraph 1, at the prosecutor's request, detention on remand may, if necessary, be prolonged by:
>
> (1) the court competent to deal with the case for a period not exceeding six months;
>
> (2) the district or appellate court for such further fixed term as required to terminate the investigation, but not exceeding one year.
>
> 3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning offences. In cases concerning serious offences [offences for the commission of which a person is liable to a sentence of a statutory minimum of at least three years' imprisonment] this period may not exceed two years.

> 4. In particularly justified cases the Supreme Court may, on the application made by the court competent to deal with the case, ... prolong detention on remand for a further fixed period exceeding the time-limits set out in paragraphs. 2 and 3, when it is necessary in connection with a suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings in the terms referred to in paragraph 3."

On 28 December 1996, by virtue of the Law of 6 December 1996, paragraph 4 of that Article was amended and the grounds for prolonging detention beyond the statutory time-limits included also:

> "... other significant obstacles, which could not be overcome by the authorities conducting the proceedings..."

COMPLAINTS

1. The applicant complaints under Article 5 § 3 of the Convention that, in both sets of proceeding his detention was unlawful and that, after 12 February 1997 he was kept in detention without any judicial decision being given on the prolongation of this measure.

2. The applicant further complains under Article 5 §§ 3 and 4 of the Convention that in both sets of proceedings his requests for release from detention were refused.

3. He also complaints under Article 6 § 1 of the Convention about the length of both sets of proceedings.

4. The applicant complains invoking Article 6 § 1 of the Convention about the outcome of both sets of proceedings.

5. He further complains under Article 5 § 2 of the Convention that on the day he was arrested he was not informed about the charges against him in the first proceedings.

6. Lastly, the applicant complains under Article 8 of the Convention about infringement of his personal rights by broadcasting on TV information concerning his arrest and charges brought against him.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention that, in both sets of proceedings his detention was unlawful and that, after 12 February 1997, he was kept in detention without any judicial decision being given on the prolongation of this measure.

The Court notes that this complaint falls to be examined under Article 5 § 1 of the Convention. However, the Court considers that it cannot, on the

basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

2. The applicant further complains under Article 5 §§ 3 and 4 of the Convention that in both sets of proceedings his requests for release from detention were refused.

The Court notes that this complaint falls to be examined under Article 5 § 3. The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

3. The applicant also complaints under Article 6 § 1 of the Convention that the length of the first set of criminal proceedings against him exceeded a "reasonable time".

In assessing the reasonableness of the length of the time in question, the Court will have regard to the particular circumstances of the case and the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

The Court observes that the period to be considered under Article 6 § 1 began on 12 November 1996 and ended on 6 February 1998. Consequently, the relevant proceedings lasted 1 year and 3 months (two instances involved).

As regards the nature of the case, it cannot be regarded as particularly complex one.

As to the conduct of the applicant, the Court observes that it does not appear from the case file that he was responsible for prolongation of the proceedings.

The Court notes that almost nine months elapsed between the date on which the applicant was indicted and the start of the trial (between 30 January and 7 October 1997). However, assessing the circumstances of the case as a whole and having regard to the overall length of the proceedings the Court considers that it cannot be said that the applicant's right to a "hearing within a reasonable time" was violated.

It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected, pursuant to Article 35 § 4.

4. The applicant further complains under Article 6 § 1 of the Convention that his right to a hearing within a "reasonable time" was violated in the second set of criminal proceedings against him.

The Court observes that the period to be considered under Article 6 § 1 began on 12 November 1996 and ended on 5 December 1997. Consequently, the relevant proceedings lasted nearly 1 year and a month.

As regards the nature of the case, it cannot be regarded as particularly complex one.

As to the conduct of the applicant, the Court observes that it does not appear from the case file that he was responsible for prolongation of the proceedings.

The Court notes that there was a delay in the proceedings of almost nine months, when no hearing took place (from February to November 1997). However, assessing the circumstances of the case as a whole and having regard to the overall length of the proceedings the Court considers that it cannot be said that the applicant's right to a "hearing within a reasonable time" was violated.

It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected, pursuant to Article 35 § 4.

5. Lastly, the applicant complains under Article 6 § 1 of the Convention about the outcome of the two sets of criminal proceedings.

The Court reiterates that according to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing but objects to the unfavourable outcome of the proceedings.

Assessing the proceedings complained of as a whole, the Court finds no indication that they were unfairly conducted.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

6. The applicant further complains under Article 5 § 2 of the Convention that on the day he was arrested he was not informed about the charges against him in the first proceedings.

However, the Court finds that the applicant did not complain about wrongful arrest to the national authorities, and has therefore not, as required

by Article 35 § 1 of the Convention, exhausted the remedies available under Polish law.

It follows that this complaint is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

7. The applicant also complains under Article 8 of the Convention about infringement of his personal rights by broadcasting on TV information concerning his arrest and charges brought against him. However, the Court is of the view that the applicant failed to submit any evidence in support of this complaint.

It follows that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints that his detention was in breach of Article 5 §§ 1 and 3 of the Convention;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President